



REAL ESTATE COUNCIL OF ALBERTA
STATEMENT ON SELF-REGULATION



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Preface

This paper describes the Real Estate Council of Alberta's (RECA) philosophy of self-regulation and the approach it will take to achieving its legislated mandate as outlined in the *Real Estate Act of Alberta (REA)*.

RECA is responsible for administration of the **REA**, which includes governing real estate brokers, property managers, mortgage brokers and real estate appraisers as those terms are defined in the **REA**. For the purposes of this paper, this group of industry sectors is collectively referred to as the "real estate industry." Individually, they may be referred to as "real estate professionals."

This paper arises from the experience and knowledge gained since RECA's creation in 1996, the natural evolution of the industry and the extensive research and planning efforts of Council during 2010 and 2011. Council's research and planning included extensive consultation with industry professionals through surveys, brokerage visits and presentations and Advisory Committee meetings. The desire to increase professionalism within the industry was a clear and consistent message across all sectors that came out through the consultations.

Consumers were also consulted as stakeholders through a series of focus groups conducted in 2009 and 2010. Council completed a three-day strategic planning exercise in March 2011, and in July 2011, it approved a five-year strategic plan for RECA for 2011-2016.

The vision Council identified reflects a future direction for RECA more closely aligned with the approach to self-regulation adopted by many professions in Alberta. RECA will strive to be seen as an impartial, principles-based governing body, facilitating excellence in self-regulation, individual responsibility and accountability.

In order to assess its own performance in achieving excellence in self-regulation, Council identified five critical success factors. The first critical success factor in its strategic plan is directly related to establishing a definition of self-regulation and states:

"Advance professionalism of the industry by establishing a clear definition of self-regulation and working with industry professionals to take ownership for and understanding of self-regulation by supporting and promoting responsible and accountable professional behaviour."

This statement represents a shift in approach for RECA's regulation of the real estate industry. While some might consider this a paradigm shift, it would be more accurate to describe this new direction as a continuation of the evolution of the industry, self-regulation and RECA itself.

Executive Summary

As Albertans, we place a high value on individual freedom, entrepreneurship, competition and innovation. We expect individuals and companies to take responsibility for their own well-being and be accountable for their actions. However, we also depend on the government to establish laws, services and programs for the greater good. Regulations for individuals and companies offering goods and services to the public provide a framework of rules that will ensure fair and open competition but must also ensure fair treatment of, and prevent harm to, consumers.

Within a democratic society, two of the most fundamental principles are the concept of the rule of law and the right to own property, and together, they reinforce the importance of the real estate industry to society. In recognition of this importance, the Government of Alberta implemented a model of self-regulation for Alberta's real estate industry and its professionals. This model of self-regulation is a privilege that comes with significant responsibility. Alberta real estate professionals must demonstrate their model of self-regulation is effective and fulfills the public interest mandate as set out in the *Real Estate Act (REA)*.

RECA's priorities, resources, policies and rules must be aligned with its mandate to protect consumers while promoting the interests of industry professionals, and real estate professionals and brokerages must understand and appreciate the importance of their role within society and the responsibility of effective self-regulation.

Alberta real estate industry professionals are being challenged to demonstrate their value to consumers, and improving the professionalism of the industry is an integral part of this value proposition. But what is the relationship between self-regulation and professionalism?

As the governing body, RECA is the mechanism through which industry standards are set. RECA ensures transparency and accountability to the public, while setting and maintaining education and licensing standards for each of the industry sectors. In doing so, RECA advances professionalism and facilitates effective self-regulation. That being said, the primary responsibility for effective self-regulation rests with individual real estate industry professionals and their brokerages.

Industry professionals must maintain a professional mindset. They must adopt a culture of adherence to standards, they must know the boundaries of their own expertise, and must maintain an attitude of civility and ethics at all times. Professionalism requires not only industry expertise but also a professional attitude towards peers, consumers and the regulatory authority.

As a governing body with regulatory responsibilities, RECA must balance the need for preservation of individual freedoms with the requirement to prevent harm. Regulation is necessary and compliance with the rule of law is fundamental. RECA's approach is to seek a regulatory balance in the fulfillment of its legislative mandate. On one hand, industry professionals want their governing body to let them go about their work, but they also want to make sure the governing body will step in when there is misconduct.

As it undertakes its responsibilities in this regard, RECA is guided by the following values and principles: Accountability of Real Estate Professionals; RECA's Focus on the Public Interest; Principles-Based Approach; Commitment to the Spirit of Self-Regulation; "Right Touch" Compliance and Enforcement; Professional Support Services; Procedural Fairness; Quality Education; Professional Development; Transparent and Quality Information; Engagement with Stakeholders; and, Operational Excellence.

There is a fine line that must be walked between the desire to protect individual freedom and the need to protect the public. The public expects professional regulatory bodies to have rules and industry standards of practice in place that ensure fair treatment of the public and prevention of harm. As the governing body for Alberta's real estate industry, RECA requires that Alberta real estate industry professionals know and abide by the **REA** and Rules. Industry professionals are also expected to read communications from RECA, and they must maintain competence in the provision of services to the public.

Cooperation with RECA is also a critical and expected part of effective self-regulation. Lack of cooperation by industry professionals prevents RECA from carrying out its responsibilities, which can seriously undermine the public's confidence in the industry's capacity for effective self-regulation. An industry professional's refusal to cooperate with RECA will be considered a serious matter and the full range of sanctions may be applied. In all cases, Alberta industry professionals must maintain the highest standards of conduct and integrity in all their dealings with the public, other industry professionals and RECA. In return, industry professionals will be treated courteously, fairly, impartially and according to the rules of administrative justice. RECA is committed to transparent professional conduct reviews and proceedings.

As individual real estate and mortgage professionals provide services to the public through and on behalf of the brokerage with which they are registered, the brokerage must ensure the business is carried out competently and in accordance with the legislation and the industry standards of practice. While individual industry professionals are held accountable to their clients, their brokerage and to RECA, brokers have additional responsibility in that they are also accountable for the conduct of industry professionals working within their brokerage.

Brokers can be held accountable even if they themselves did not participate in misconduct. This accountability arises from the fundamental obligations of a brokerage to a client and the expectations of the public, and can occur where the broker failed to be actively engaged in the management of the brokerage, failed to ensure an adequate level of supervision, was willfully blind to the conduct in question or had knowledge of misconduct and failed to take reasonable steps to prevent the misconduct from occurring.

Notwithstanding RECA's approach to determining an individual's accountability in a misconduct situation, ultimately, the brokerage is always accountable for its actions and those of its employees and industry professionals.

RECA is a strong supporter of ongoing dialogue with industry associations. Though there are differences between RECA's mandate and that of related industry associations, it is in the

best interests of industry professionals and the general public to collaborate or partner on projects that advance the interests of all stakeholders.

Effective self-regulation of Alberta's real estate industry professionals requires the cooperation of all industry stakeholders. It is incumbent on all industry professionals to be accountable and professional at all times, with clients, customers, other industry professionals, their governing body and other industry associations. RECA is the facilitator of self-regulation for Alberta's real estate industry professionals, but the future of the industry – and its regulation – is in the hands of individual industry professionals and their brokerages.

Purpose

The purposes of this paper are to:

- a) clearly describe RECA's philosophy and approach to self-regulation;
- b) gain the support of individual industry members, brokerages and industry organizations for RECA's vision and approach to self-regulation;
- c) initiate a dialogue with industry members and stakeholders regarding their roles in self-regulation and potential opportunities for collaboration.

PART 1: INTRODUCTION

The Role of Regulation in Society

"Laws enable complete strangers, with different backgrounds, histories, ethnicities, and social norms, to conduct business with each other with greatly reduced risk. For, example a major investment such as buying a home can be intimidating even with all the protection of property law, building codes, and insurance. Imagine what it would be like if such transactions were completely unregulated. There is a powerful correlation between the wealth of a society and the existence of written laws with mechanisms for enforcement and adjudication ... Laws, of course, do not replace trust, and societies can become dysfunctional if social trust breaks down and people over rely on legal institutions... Nevertheless, complex, large-scale cooperation is impossible without a well-functioning legal and regulatory system to provide protocols for cooperation."

Eric D. Beinhocker, The Origin of Wealth 2006

In a democratic society that relies on free markets and an open economy such as Canada, there are a number of elements of social infrastructure that are necessary to ensure long term stability, viability and prosperity for its citizens. The observations of Eric D. Beinhocker reinforce the importance of stable and effective government structures and adherence to the rule of law. His message speaks directly to the real estate industry and the notion of self-regulation.

We have a diverse society which, in turn, is reflected in the makeup of the real estate industry. Alberta's industry members come from different backgrounds, histories, ethnicities and social norms.

However, notwithstanding our different backgrounds, Alberta has its own distinct culture, norms and values. In Alberta, we place a high value on individual freedom, entrepreneurship, competition and innovation. Albertans have a strong sense of family, community and public service. We are an open society that values education, hard work and respect for the law. We also expect individuals and brokerages to take responsibility for their own well-being and be accountable for their actions.

Within the context of Alberta's culture, norms and values, the role of government is to establish the laws, services and programs designed to meet the interests of all citizens or the "greater good." For democratic governments, this is their public interest mandate.

Regulations that affect individuals and firms offering goods and services to consumers provide a framework of rules for economic activity to occur. The regulatory framework is intended to ensure fair and open competition but also to set rules that ensure fair treatment of, and prevent harm to, consumers.

When consumers are harmed, lack of proper regulations or ineffective regulation by government or a regulatory agency is often the target of blame. If individuals or firms are prevented from doing something innovative, risky or that poses potential harm to consumers, excessive regulation is the culprit.

The public, media and political leaders often point both ways. Whether they seek more or less regulation will depend on the given issue, moment in time or mood of the day. Often regulators will hear comments such as:

"just let us do our business ... we need to get rid of all this red tape"

"the regulators are simply there to protect the industry"

"if the regulator had just done its job, this would never have happened"

"we need regulations to prevent this from happening again"

As some have observed, the rhetoric may be for less red tape or regulation but often the result is more regulation whether it's dealing with small businesses, large financial institutions, individuals who provide professional services, volunteers who wish to coach youth sports, or for owners of dogs and cats.

We want to have our individual freedoms and we express our willingness to accept responsibility for our own behaviour. However, we also want to be protected from potential harm. We expect individuals to make informed choices when they choose to work with or hire the individuals and brokerages that provide services to the public. However, we also expect regulators to set and enforce standards to ensure no harm will come to the public.

Laws and regulations that govern the behaviour of individuals and brokerages, therefore, are positioned between the values of individual freedom and free markets and the desire to preserve the public interest. Too much regulation is seen as interference in the personal lives of citizens and the conduct of business. Too much regulation may also be less effective in

achieving the public interest mandate and can have a negative impact on investment and the economy.

Privilege of Self-Regulation

Two fundamental principles of a democratic society, which are closely related, are the concept of the rule of law and the right to own property. These two principles, when brought together, reinforce the importance of the real estate industry to society.

Perhaps it was this recognition, and the critical role real estate professionals play in the transfer of property rights that led the Government of Alberta to develop a “professional” model of self-regulation for the real estate industry.

Alberta’s real estate professionals play a variety of key roles in Alberta’s property system including estimating property values, advising sellers and landlords, advising buyers and tenants, negotiating contracts, holding funds in trust, securing financing and managing property on behalf of owners.

By choosing a self-regulation model, the Government of Alberta has demonstrated its confidence, and placed its trust, in the real estate industry on behalf of all Albertans.

“Bill 28 [the Real Estate Act] will make regulating these industries more efficient and will create an organization that is accountable not only to industry representatives but to the general public or consumer as well...Bill 28 finalizes a successful process that started in 1987. It creates an independent council to oversee the real estate industry. It gives the council the authority to set standards for the industry and to ensure that those standards are met...This will no doubt result in high standards for the real estate agents, salespeople, mortgage brokers, and property managers, who will help ensure fairness to the real estate marketplace.” The hon. Member for Lacombe-Stettler, Mrs. Judy Gordon
Alberta Hansard, April 27, 1995

While it is a privilege to be given the right of self-regulation, it is a privilege that comes with significant responsibility. It is essential real estate professionals demonstrate our system of regulating the real estate industry is effective and fulfills the public interest mandate set out in the **REA** and that the policy of self-regulation was the correct choice.

“It is important to note the fact that the real estate industry, like the legal profession and others, is self-regulating. R.E.C.A. was statutorily created, and one of its key functions is to ensure that its members...abide by the rules and Code of Conduct set by R.E.C.A. for the purpose of protecting members of the public.” Mr. Justice Eric Macklin, J.C.Q.B.A., October 21, 2004

For RECA, this means its priorities, resources, policies, and rules must be aligned with its public interest mandate. For industry professionals, it means they must maintain the highest level of accountability, ethics and responsibility. It is a fundamental requirement that individual industry professionals and their brokerages understand and appreciate the

importance of their role within society, the nature of their relationships with consumers and each other, and the responsibilities associated with effective self-regulation.

Self-Regulation and Professionalism

“Strive not to be a success, but rather to be of value.” Albert Einstein

Today, the future of the real estate industry is challenged to present an enduring value proposition to consumers. A key component of achieving this value proposition is to improve the level of professionalism within the industry. RECA’s own strategic plan commits itself to advancing the professionalism of the industry. If that is the case, what is the relationship between self-regulation and professionalism?

As previously stated, the regulatory model the **REA** establishes for the industry is based on the self-regulatory model of the traditional professions. In other words, the model RECA works under is designed to advance professionalism and responsible self-regulation. The challenge is to understand the relationship between these two great ideas and develop a consensus as to what needs to be accomplished and by whom.

The concept of professionalism means different things to different people. For the purposes of this paper, RECA suggests the following elements are consistent with consumer protection and the expectations of the public, and form the foundation of every profession:

- ✓ appropriate education and licensing standards;
- ✓ adherence to standards of practice (rules) established by the governing body;
- ✓ provision of competent services;
- ✓ a culture of integrity, civility and ethical conduct;
- ✓ support for continuing education and professional development; and,
- ✓ transparency and accountability to the public.

These elements constitute what is commonly referred to as “the public interest.” As a result, every profession requires a mechanism to achieve the mandate of serving the public interest.

As the governing body, RECA is the mechanism for setting industry standards and ensuring transparency and accountability to the public. RECA has the responsibility for ensuring appropriate education and licensing standards for the various sectors within the real estate industry. RECA has the responsibility for setting and enforcing rules that establish standards of practice and conduct of individuals and brokerages within the industry. It also has the responsibility for establishing re-licensing education requirements and promoting professional development.

By carrying out its responsibilities, RECA advances professionalism and facilitates effective self-regulation within the industry. More importantly, it is the day-to-day conduct of real estate professionals and brokerages, and their interactions with members of the public that

ultimately determines whether industry members are acting in a professional manner and effective self-regulation is occurring.

The primary responsibility for effective self-regulation and professional conduct rests with the individuals and brokerages authorized by RECA to provide services to the public. It is their individual and collective responsibility to ensure they have all the necessary resources, knowledge and skills to serve their clients competently and act ethically at all times.

While RECA can offer updates on issues related to legislation, legal developments, compliance, risk reduction and emerging regulatory issues, it is incumbent upon individuals to ensure they are up to date and competent in their area of practice. Courses and seminars offered through industry associations, boards and education providers play an important role in advancing the professionalism of the industry.

In addition to knowing the boundaries of one's expertise, a culture of adherence to standards of conduct set by a governing body, such as RECA, and acting civilly and ethically at all times is imperative. Professionalism is as much about an attitude toward clients, one's colleagues and the industry as a whole as it is about an individual's expertise.

If the public perceives individuals and brokerages within the real estate industry collectively are professionals, they will have the same high level of trust and confidence in the industry the Government of Alberta showed in 1995. The public will see the value in Alberta's real estate professionals and success will inevitably follow.

PART 2: PHILOSOPHY AND APPROACH TO SELF-REGULATION

2.1 Vision

RECA is mandated to protect consumers and to provide services that enhance and improve the industry and the business of industry professionals.

RECA builds consumer trust and confidence in the industry professional by:

- Setting and enforcing standards of conduct and professional development requirements for the industry to protect the consumer
- Providing services that enhance and improve the industry
- Promoting the integrity of the industry
- Protecting against, investigating, detecting and suppressing mortgage fraud as it relates to the industry

The public interest is best served when all industry professionals are provided the opportunity to be as good as they can be and all stakeholders collaborate to promote and support an environment in which licensees can flourish whilst ensuring the best possible experience for the public within the real estate profession.

The Real Estate Council of Alberta will:

- Be seen as an impartial, principles-based governing body, facilitating excellence in self-regulation, individual responsibility and accountability
- Advance the knowledge, career preparation and ongoing practice in the industry through professional development programs and services
- Establish and promote quality standards and performance improvement solutions in a fair and respected manner that enhance public protection, trust and confidence in the real estate industry.

2.2 Philosophy

As indicated in the Introduction, society seeks both the preservation of individual freedoms and the prevention of harm. In civil society, to achieve these goals, regulation is necessary and compliance with the rule of law is fundamental. However, regulators often find themselves between these competing goals.

RECA's approach to this societal challenge is to seek a regulatory balance in the fulfillment of its legislative mandate. This regulatory balance takes into account a number of elements: Alberta's culture, norms and values; the importance of consumer choice; the desire of real estate professionals and brokerages to provide services through business models of their choice; and, the need for a real estate industry that has the trust and confidence of consumers.

Accordingly, RECA will be guided by the following values and principles as it carries out its mandate as the governing body for the real estate industry.

Accountability of Real Estate Professionals

Real estate professionals and brokerages will be acting with a professional mindset as they deliver services to the public. They have the primary responsibility for effective self-regulation. Their standards of conduct and business practices collectively will determine the value and integrity of the industry. They are ultimately accountable for their conduct to clients, colleagues and the governing body.

The individual and collective willingness of the industry to provide competent service, act ethically, and achieve widespread compliance with the **REA** Rules is a more powerful and fundamental self-regulatory mechanism than the imposition of sanctions by RECA. The level of trust and confidence in the industry is determined by its individual and collective commitment to this principle.

RECA's Focus on the Public Interest

As a facilitator of self-regulation, RECA will be focused on the public interest. It will be an independent body that is fair, transparent and accountable. It will follow a model of regulation that reflects the evolution of professionalism within the real estate industry.

Principles-Based Approach

To the extent possible, RECA will use a principles-based approach to rule making and setting standards for the industry. **REA** Rules will be supplemented with information resources to assist industry professionals with compliance, as required. Reporting and accounting rules will require greater detail; however, flexibility in these rules will be incorporated, where it is practical to do so, to reflect ongoing changes in technology and the business environment.

Commitment to the Spirit of Self-Regulation

Legislation governing the business of industry professionals is intended to promote the integrity of the industry and protect consumers. It is intended to be comprehensive and effective. The drafting of statutes, regulations and rules is a challenge for government and a regulatory body such as RECA. Rules may not always be clearly written nor is it possible to establish rules to cover every possible circumstance an individual or brokerage might face. More regulation is not always the solution to a problem; new regulations can also create new problems.

The **REA**, Rules and RECA's information services collectively provide a comprehensive set of standards industry professionals are expected to follow in their day-to-day practices. Where ambiguity exists, industry members are reminded they are professionals and must be guided by the spirit and intent of the applicable rule. The obligation of industry members is to seek compliance and act ethically, not to seek methods or practices to "get around" the rules.

An industry professional, therefore, must be vigilant with respect to his or her own behaviour as well as that of colleagues. However, it is inconsistent with the spirit of the **REA** Rules to use any of these provisions as an instrument of harassment or as a procedural weapon in the absence of a genuine concern respecting the interests of a client, the industry or the public.

"Right Touch" Compliance and Enforcement

RECA's approach to compliance and enforcement of standards will be consistent, proportionate, effective, transparent and timely. Where appropriate, it will focus on providing information, advice and suggestions for change in future behaviour. That said, RECA will utilize the full range and level of sanctions available in its overall strategy to obtain industry compliance and protection of consumers. When it is appropriate to do so, it will encourage consumer complaint resolution through the real estate professionals and brokerages that provided the services giving rise to the complaint.

Professional Support Services

RECA will provide a comprehensive range of information, advisory and support services designed to assist industry professionals in meeting industry standards and providing services to the public. RECA will utilize technology and a variety of communication channels to disseminate information and communicate with industry professionals on a timely basis.

Procedural Fairness

In its contested hearings process, RECA will follow the procedures set out in the **REA** and adhere to the rules of administrative fairness and natural justice.

While resolution of disciplinary cases through the consent process is advantageous to all parties concerned, RECA will not proceed with a consent agreement on the facts of a case, or the sanction, without ensuring the industry professional understands the case against them, agrees fully with the terms of the consent agreement, has been given time to receive independent legal advice, is proceeding on a voluntary basis and understands the implications of their decision to proceed.

Quality Education

RECA's education programs and courses will provide a quality experience for learners to prepare them for a career in their particular sector of the real estate industry. Development and delivery of pre-licensing and re-licensing courses will be based on RECA's education principles and core values.

Principles

- The primary delivery method of licensing and re-licensing education courses will be through E-Learning
- Provide a quality education program any time a learner wants to take a course – Any Time
- Provide a quality education program without geographical restrictions for a learner – Any Place
- Provide a quality education program at the pace of a learner – Any Pace

Core Values

- RECA education should be available anytime. This value is supported by the flexible delivery of e-learning. Learning is accessible at any time regardless of learners' work, family or personal schedule.
- RECA education should be accessible from anywhere regardless of the remoteness of the geographic location. This value is supported by the flexible delivery of e-learning.
- RECA education should be designed for self-paced learning in order to meet individual learning needs. This value is supported by the flexible delivery of e-learning.
- RECA education should encourage development of the individual's critical thinking and analytical skills.

- RECA education should promote the learner taking responsibility for their learning through supporting a self-directed and timely approach to education.
- RECA education programs and materials should be based on accepted core competencies for the respective industry, where applicable.
- RECA education materials and methods should be current, accurate, and contextually relevant.
- RECA education programs should be designed using a modular approach for greater ease of updating and greater potential for re-purposing of educational resources.
- RECA education should be designed using a content-appropriate mix of media design elements that maximize opportunities for active learning by supporting learner interactivity and engagement.
- RECA education programs should provide relevant knowledge and practice-based information and activities applicable in the respective industry.
- RECA education should provide learner assessment opportunities with immediate feedback based on the key learning constructs and the identified competencies for the respective profession.
- RECA education should embrace prior learning for education equivalencies for appropriate industries with customized programs.

Professional Development

It is ultimately the responsibility of each individual real estate professional to remain current with continuing professional development and to ensure their own competence in the delivery of services to the public.

RECA supports professional development through a variety of activities including publishing information, conducting presentations, and delivering timely and relevant re-licensing courses. The focus of RECA's professional development activities is on industry standards. RECA's mandate of promoting the integrity of the industry and public protection is reflected in its Re-Licensing Education Program (REP). REP course content will be designed to ensure industry professionals have an understanding of current and emerging issues related to legislative, legal, risk reduction, compliance and regulatory matters.

Where practical, RECA will collaborate with and support industry associations, education providers and other organizations that have goals to promote professional development within the real estate industry.

Transparent and Quality Information

RECA will be transparent by providing information and operational updates to its stakeholders. Its communications will be timely, relevant and aligned with the interests of its industry professionals and the public. Transparency and access to information will be balanced with the principles of fairness and the right to privacy of industry professionals.

Engagement with Stakeholders

RECA, through its representatives and various communication channels, will be engaged with industry members and industry stakeholders. It will continually scan the industry and regulatory environment to stay informed and to identify emerging issues. Comments and feedback on issues will be sought from industry members, industry associations and the public through liaisons, advisory committees, discussion papers, consultations and surveys. Information-based decision-making will be supported by research and information gathered from multiple sources.

Operational Excellence

Operationally, RECA will be an innovative and agile organization focused on its strategic plan, priorities and outcomes. It will adjust its priorities as required to address unforeseen issues in a timely manner. It will be economic, efficient and effective in the delivery of services and in fulfilling its responsibilities as set out in the **REA**.

PART 3: APPLICATION OF REA RULES TO THE PROFESSIONAL

Industry professionals are responsible for knowing and following the **REA** Rules, and for providing competent services to the public. They are expected to read communications from RECA and keep up to date on changes to the **REA**, Rules and standards of practice published by RECA.

In the event of a request for information or an investigation into their conduct, industry professionals are required to cooperate fully with any representative of RECA carrying out their duties and responsibilities under the **REA**. RECA will give an industry professional every reasonable opportunity to provide the information requested.

Lack of cooperation by industry professionals prevents RECA from carrying out its responsibilities. It undermines the public's confidence in the industry's capacity for effective self-regulation. As a result, lack of cooperation is considered a serious matter and the full range of sanctions, including suspension, may be applied. In return, industry professionals will be treated courteously, fairly, impartially and according to the rules of administrative justice. RECA is committed to transparent professional conduct reviews and proceedings.

Assessment of the conduct of a real estate professional, arising out of a complaint or information received by RECA, will be based on all the facts and circumstances at the time of the conduct in question. This includes the wilfulness and seriousness of the conduct, the impact of the conduct on the complainant and integrity of the industry, and the existence of previous violations. It also includes any mitigating factors, such as an industry professional's willingness to admit misconduct.

What action, if any, taken by RECA in respect to a particular case will depend on a full assessment of all relevant factors. Disciplinary sanctions may or may not be applied. For example, in relatively minor matters, utilization of the Voluntary Broker Resolution process may conclude the matter without RECA taking further action. In some cases, an advisory note outlining the reason the behaviour in question was problematic, with a recommendation to avoid future problems, may be sufficient. In other cases, an apology to the complainant and a change in future behaviour may resolve the matter. Additional training, education or supervision may also be required.

In cases of a more serious nature, the full range and level of disciplinary sanctions will be applied. Again, the circumstances of the individual case will be critical to arriving at an appropriate sanction. While no two cases are identical, previous cases and panel decisions will be a guide in developing an appropriate sanction. These may include an educational component, a fine, costs, suspension or cancellation of an authorization, or, some combination of these alternatives. In the most serious cases, where the protection of consumers is paramount, a suspension or cancellation of an authorization will be pursued as early in the process as possible.

An industry professional remains subject to the **REA** Rules no matter where the individual conducts their professional practice. This applies to the practice of an industry professional entirely in another jurisdiction. If an individual becomes licensed in another jurisdiction and there is an inconsistency or conflict between the rules of conduct of the two jurisdictions in a given situation, the rules of the jurisdiction in which the industry professional is practising in that matter will normally prevail. However, RECA continues to maintain jurisdiction over the conduct of that industry professional. Therefore, disciplinary proceedings by another governing body may form the basis for conduct proceedings by RECA as well.

In a situation where the practice in question had elements of conduct that occurred in Alberta and another jurisdiction, both RECA and the regulatory body in the other jurisdiction may initiate disciplinary proceedings. The **REA** Rules would be applied in any conduct proceeding initiated by RECA.

Industry professionals remain subject to the **REA** Rules if they are trading in real estate or dealing in mortgages on their own behalf. In those cases, the industry professionals must maintain the highest standards of conduct and integrity in all their dealings with the public.

Generally, however, RECA will not be concerned with the purely private or extra-professional activities of an industry professional that do not bring into question the integrity of the industry professional or the real estate industry.

PART 4: APPLICATION OF REA RULES TO THE BROKERAGE

While it is individual licensees who provide services to the public, in the real estate and mortgage brokerage sectors, licensees must be registered with a brokerage and can only offer their services to the public on behalf of that brokerage. While they may have the most direct service relationship with clients, the contract to provide services is between the brokerage and the client.

It is the responsibility of the brokerage to ensure the business of the brokerage is carried out competently and in accordance the **REA**, Rules and any other laws that govern trading in real estate or dealing in mortgages.

The broker is responsible for managing the business of the brokerage and supervising the individual industry professionals who are registered with the brokerage.

As a general rule, individual industry professionals are accountable to their clients, their brokerage and to RECA for any actions they engage in that may constitute unprofessional conduct or conduct deserving of sanction within the **REA** and Rules.

The broker is accountable for his or her own conduct in accordance with the principles outlined above. (See Part 3, “Application of REA Rules to the Professional”). In addition to being accountable for their own actions, RECA may hold the broker accountable for the conduct of associate brokers and associates registered with the brokerage and employees, in certain circumstances.

The circumstances in which a broker will be accountable to RECA are derived from the fundamental obligations of a brokerage to their clients and the expectations of the public they serve. These include situations where the broker participated in the misconduct, failed to be actively engaged in the management of the brokerage, failed to ensure an adequate level of supervision, was wilfully blind to the conduct, or had knowledge of misconduct and failed to take reasonable steps to prevent the misconduct from occurring. The broker will also be held accountable if, upon becoming aware of the misconduct, failed to take reasonable steps to correct the misconduct or reduce any harm that may have resulted.

Notwithstanding the approach RECA takes with respect to assessing the conduct of the broker, associate brokers and associates, and determining accountability for their individual actions, the brokerage is always accountable for its actions and those of its employees to the public and RECA. The brokerage is ultimately responsible for its business practices and the conduct of its representatives.

PART 5: RELATIONSHIP TO INDUSTRY ASSOCIATIONS

It is important there is a clear understanding of RECA's mandate and how it differs from industry associations. Overlap or duplication of services, bylaws or rules of industry associations that conflict with the **REA** Rules and RECA interpretations, or conflicting advice on the same issues, should be avoided whenever possible. For these reasons, RECA supports ongoing dialogue with industry associations and, where appropriate, entering into agreements that will promote clarity of mandates and elimination of duplication, overlap and conflict.

RECA values its relationships with industry associations and is committed to ongoing communication and consultations. It is important to recognize all industry associations (including real estate boards) are private membership organizations and membership is voluntary.

Depending on their mandates, industry associations are also referred to as "trade associations." Their boards of directors are made up exclusively of association members whose primary role is to serve the interests of their members. They are fiduciaries of the funds they raise from their members and the assets of the association.

While their mandates may vary, the goal of every industry association is to provide services to their members. Membership in a real estate board is voluntary, but members are required to abide by the bylaws of the association and follow the rules related to the use of any services it provides.

Industry associations also provide advocacy and representation on behalf of their members in matters of interest to the membership. This includes promoting the association, promoting the services of their members to the public, and lobbying governments and regulatory bodies such as RECA. The views expressed by an association may or may not reflect the views of RECA, and RECA has no jurisdiction over industry associations.

In some situations, the interests being advanced by an industry association may coincide with the public interest mandate of RECA. For example, most industry associations support education and increased professionalism within their membership. As a result, they may be involved in the delivery of education programs specific to the needs of their members. The goal of a better educated and professional industry is one shared with RECA and is in the public interest.

As a general rule, when RECA is considering changes to the standards of practice set out in the Rules, it will seek input from industry professionals and the trade associations to gain their perspectives and insights into the changes under consideration. The information and advice received from the associations is valued and taken into account in RECA's decision making process.

As the governing body, RECA's focus is on the public interest. Taking into account all the information and input, it will strive to make decisions it believes will promote the integrity of the industry and protect consumers.

Notwithstanding the differences in the mandates of RECA and the various industry associations, it is in the interest of the industry and the public for the various organizations to communicate with each other and, when it is appropriate, to collaborate or partner on projects that advance the interests of all stakeholders. For example, RECA supports collaboration on projects initiated by industry associations designed to provide information, resources or courses to advance the expertise and professionalism of industry members.

PART 6: CONCLUSION

It is clear there is a connection between responsible self-regulation and the accountability of real estate professionals to their clients, their colleagues and to RECA. There is also a direct relationship between the success of self-regulation and the level of professional conduct within the real estate industry.

RECA is confident that setting higher standards for Alberta's real estate industry is consistent with the expectations of real estate professionals and the industry as a whole. This approach is also consistent with the expectations of the public and government. By raising the bar and delivering services in a professional manner, the real estate industry will earn and retain the trust and confidence of all Albertans.

RECA looks forward to continued dialogue and collaboration with industry professionals and stakeholders as it strives to achieve its vision of being seen as an impartial, principles-based governing body, facilitating excellence in self-regulation, individual responsibility and accountability.

While RECA may be a facilitator of self-regulation, the future of the industry and the profession is not in the hands of a government, regulatory body or industry association, rather the future of the industry and the profession is in the hands of each individual practitioner and the brokerages with which they are associated.